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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/564,725

01/17/2006

Petur Gudjonsson

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1619

23117

7590

02/22/2008

NIXON & VANDERHYE, PC

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EXAMINER

GIBSON, RANDY W

ART UNIT

PAPER NUMBER

2841

MAIL DATE

DELIVERY MODE

02/22/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/564,725

Applicant(s)

GUDJONSSON ET AL.

Examiner

Randy W. Gibson

Art Unit

2841

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 January 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-51 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-51 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SE/US)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 20 December 2007 have been fully considered but they are not persuasive. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Applicant makes the following odd statement:

Thus, De Caris discloses four weighing devices, scales 24 and 50 and capacitive sensors 36 and 59, but, again, there is no discussion in De Caris of any attempt to ascertain whether the precision scales 24 and/or 50 or the capacitive sensors 36 and/or 59 are accurate, much less any discussion of how such scales and/or sensors would be recalibrated if a determination could be made that any of such scales and/or sensors are inaccurate.

This argument can be rebutted simply by quoting the abstract on the front page of the De Caris reference. No further comment by the examiner is deemed necessary. The relevance of applicant's additional observations and arguments are not understood.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

1. Claims 1-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jordan et al (US # 4,428,179) in view of Fukuda (US # 4,499,961). Jordan discloses weighing items on a first scale (Col. 3, lines 23-32), determining initial weights of a plurality of receptacles by another scale (Col. 2, lines 57-68), and forming a batch by directing an item into a selected receptacle by comparing weights from the two scales (Col. 3, lines 3-22 & 33-60; Col. 5, lines 3-22). Jordan, however, does not weigh for a third time the resulting batch in order to detect and correct system inaccuracies. However, Fukuda disclose that it is known to weigh a completed batch in a combinational weighing system in order to detect and correct system inaccuracies (Col. 4, line 67 to col. 5, lines 66). It would have been obvious to the ordinary practioner to provide an additional weighing conveyor in the apparatus of Jordan to weigh the completed batches of items in order to provide real time correction of the system performance, as suggested by Fukuda, to improve system accuracy without sacrificing throughput.

2. Claims 1-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Connell (US # 6,151,866) in view of Ruppel (US # 5,109,936) and De Caris et al (US # 5,750,938). Connell disclose a method for batching items into receptacles weighing items on a first scale (Col. 3, lines 28-34), sorting them into a receptacle based on weight (Col. 5, lines 1-27), and weighing the receptacle on a second scale (Col. 4, lines 41-48). The idea of taking into account the initial tare weight of the receptacle would be inherently present, otherwise the second weighing step would be inaccurate and

meaningless. Connell disclose the claimed invention except for using the data from the downstream check weigher for correction "system inaccuracies". However, the general idea of using data from a check weigher to dynamically recalibrate an upstream weighing scale is known as shown by the examples of Ruppel and De Caris, and would have been an obvious modification to the method disclosed in Connell motivated by desire to increase system accuracy.

3. Claims 1-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO-A-0000036 (hereafter "D1") in view of U.S # 3,945,448 (hereafter D2), Ruppel (US # 5,109,936) and De Caris et al (US # 5,750,938). Document D1, which is considered to represent the most relevant state of the art, discloses a method for batching items into receptacles, said method comprising determining an item weight by weighing the item on a first scale, and directing the item into the selected receptacle. The subject-matter of claim 1 differs from document D1 in that comprises determining initial weights of a plurality of receptacles by weighing the receptacles on receptacles scales, based on a comparison of the weight determined by weighing an item on the first scale and the initial weights of the receptacles, selecting one of the plurality of receptacles for the item thereby forming a batch, determining a resulting weight of the selected receptacle by weighing the receptacle on a corresponding receptacle scale, and using the data from the downstream check weigher for correction "system inaccuracies".

However, Document D2 discloses (see col. 1, lines 5-21; col. 3, lines 24-29; Col. 3, line 65 - col. 4, line 13; col. 4, lines 24-31; col. 5, lines 27-31) a system for minimizing

the package weight variance based on a continuous comparison between the summation of the accumulation and signal representing the desired ultimate weight. It would have been obvious to modify the system of D1 to incorporate the features of D2 motivated by to determine more precisely the weight of the batches and to reduce overweight or underweight.

The general idea of using data from a check weigher to dynamically recalibrate an upstream weighing scale is known as shown by the examples of Ruppel and De Caris, and would have been an obvious modification to the method disclosed in D1 motivated by desire to increase system accuracy.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Randy W. Gibson whose telephone number is (571) 272-2103. The examiner can normally be reached on Mon-Fri., 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F. Gutierrez can be reached on (571) 272-2245. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2841

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Randy W. Gibson/
Primary Examiner, Art Unit 2841

Randy W. Gibson
Primary Examiner
Art Unit 2841